IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 3RD JULY 2007 / 12TH ASHADHA 1929

WP(C).No. 14858 of 2007(R)

OS.327/2004 of MUNSIFF COURT, THALASSERY

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PETITIONER:

P.K.ABDUL RAHIM
S/O.ABOO, RESIDING AT BISMILLA HOUSE,
TEMPLE GATE,PO,
THALASSERY-2.

BY ADV. SRI.K.V.SOHAN

RESPONDENTS:

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1. MISRIYA MUNEER,
D/O.YOUSUF,
"ALEEZ", PO.PERINGADI,
THALASSERY TALUK.

2. CHEEKKILIKKODAN KOVERI
KUNHIKUTTY ALI,
S/O.AHAMED,
THIRUVANAD AMSOM DESOM,
PO.THIRUVANGAD, THALASSERY.

3. SECRETARY,
NEW MAHE GRAMA PANCHAT,
NEW MAHE

4. THE DISTRICT COLLECTOR,
KANNUR.

R3 BY ADV. SRI.M.K.SUMOD
SRI.KAUSER EDAPPAGATH
R5 BY GOVT. PLEADER SMT. R.BINDU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1: TRUE COPY OF THE PLAINT IN O.S.327/04 FILED BEFORE THE MUNSIFF COURT, THALASSERY DT.16.11.2004

EXT.P2: -DO- OF THD APPLICATION I.A.107/07 IN O.S.327./04 FILED BY THE PETITIONER BEFORE THE MUNSIFF COURT, THALASSERY DT. 24.1.2007

EXT.P3: -DO- OF ORDER IN I.A.107/07 IN O.S.327/04 DT.20.2.2007 PASSED BY THE MUNSIFF COURT, THALASSERY

jj /true copy/

P.A. TO JUDGE

M.N.KRISHNAN, J.

WP(C)No. 14858 OF 2007 R

Dated this the 3rd July, 2007.

JUDGMENT

This writ petition is filed to quash Ext.P4 order passed by the learned Munsiff, Thalassery in O.S.327/04. The suit is one for a declaration to the effect that defendants 1 and 2 have constructed the building in violation of the permit issued by defendant No:3 and also for a direction to demolish the unauthorised construction and further to restrain them from making any constructions in the property. The learned Munsiff found that the jurisdiction of the Tribunal is optional and the dispute is with respect to a boundary. Therefore, there is no bar to proceed with the case by the civil court. The point of dispute between the parties appears to be which is the correct demarcating boundary of the property and if it is so it is only the civil court which can decide that issue and not the tribunal constituted under the Act. It is true that under Section 271-S of the Kerala Panchayat Raj Act 1994 against the decisions of the local self government an appeal shall lie to the tribunal constituted under the said provision. It is not really the competency or validity of the said sanction that is under challenge what is really under challenge is which is the demarcating boundary

between the two properties. When it is so, it is crystal clear that it is only the civil court that can resolve such a dispute. Therefore, I find that the order passed by the learned Munsiff does not suffer from any infirmity and this writ petition is dismissed.

M.N.KRISHNAN
Judge

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